**IN THE HIGH COURT OF PUNJAB AND HARYANA AT**

**CHANDIGARH.**

CWP No.9942 of 2007
Date of decision: 06.09.2007

Apparel Exporters and Manufacturers Association

-----Petitioner

Vs.

State of Haryana and another

-----Respondents

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL**

**HON'BLE MR JUSTICE AJAI LAMBA**

Present: Mr. Rajiv Nayyar, Sr. Advocate with
Mr. Rohit Khanna, Advocate for the petitioner.

Mr. Rajiv Kwatra, Sr.DAG,Haryana.

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**JUDGMENT:**

**ADARSH KUMAR GOEL, J.**

This petition seeks quashing of notification dated 27.6.2007, Annexure P.1 fixing minimum wages under Section 5(2) of the Minimum Wages Act, 1948 (for short, 'the Act').

Case of the petitioner is that it is an association of manufacturers and exporters of ready-made garments and employs about 10 lakh workers, most of whom are semi-skilled, literate or illiterate women. Rate of minimum wages as on 1.1.2006 was Rs.2447.32 which was raised to Rs.2484.28 with effect from 1.7.2006 and then to Rs.2553.58 w.e.f 1.1.2007. Proposal to revise the wages further was issued vide notification dated

23.3.2007, Annexure P.3 but without giving an opportunity to the petitioner, the impugned notification dated 27.6.2007 was issued fixing arbitrary rate of minimum wages by giving increase of Rs.1000/- per month i.e. 40% over the last rate of minimum wages. There was no corresponding increase in the cost of living as reflected in the Consumer Price Index (CPI). The petitioner was also denied opportunity of personal hearing. Objections of the petitioner in Annexure P-3A, dated 26.4.2007, are that no steep rise in CPI had taken place corresponding to the proposed increase in the minimum wages. In the past 17 years, increase in wages was 12% per annum while proposed increase was 40%. Prevailing economic conditions and other factors were not taken into account.

In the reply filed on behalf of the State of Haryana, stand taken is that the impugned notification is not for half yearly revision of rate of minimum wages but for fixation of minimum wages under Section 3(1)(b), for which, variation in the price index was not the only basis. Earlier, minimum wages were fixed vide notification dated 1.3.2002 and present exercise was undertaken after five years in the light of the relevant factors. Before issuing the impugned notification, two months' notice was given under section 3(1) (b) and Proviso to section 5(2) of the Act for inviting objections from the affected parties. The said objections were duly considered in the meeting held on 30.5.2007 and 19.6.2007 by the Minimum Wages Advisory Board. On the recommendation of the Minimum Wages Advisory Board, rate of minimum wages was

fixed. Giving of personal hearing was not legally required. The minimum wages were bare minimum and capacity of the employer to pay had no relevance. The rate of minimum wages has been fixed in the light of observations of the Hon'ble Supreme Court in **The Workmen represented by Secretary v. *The Management of Reptakos Brett & Co. Ltd. & Another*** AIR 1992 SC 504, which referred to recommendations of the 15th Session of Indian labour conference held in 1957, which recommended following norms:-

> "a) 3 consumption units for one earner.
>
> b) Minimum food requirements of 2700 calories per average Indian adult.
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> c) Clothing requirements of 72 yards per annum per family.
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> d) Rent corresponding to the minimum area provided for under Government's Industrial Housing scheme.
>
> e) Fuel, lighting and other miscellaneous items of expenditure to constitute 20% of the total minimum wage."

The Working Group set up by the Central Advisory Board under the Act had also recommended the following norms:-

> "a) the norm of 3 consumption units i.e.,2 adults plus 2 children for one earner.
>
> b) Minimum food requirement of 2700 calories per average Indian adult. This incidentally synchronizes almost with 2668 calories of basket of food items worked out as per capita food consumption in rural area reported by NSSO (55th Round) Consumer Expenditure Survey in 1999-

2000, which may be accordingly calibrated with reference to NSSO quinquennial Surveys.

c) the clothing requirement in terms of per capita expenditure as estimated by NSSO Consumer Expenditure Survey.

d) The expenditure on fuel, lighting and miscellaneous as per ILC norms and expenditure on children's education, medical requirement etc., as per Supreme Court Judgment should also be determined by the results of Consumer Expenditure Survey conducted by NSSO."

If the above norms are kept in mind, the rates of minimum wages will be much higher than the rates fixed by the State Government. The rate fixed in the impugned notification was comparable to the rates of minimum wages prevalent in the National Capital Region as well as UT Chandigarh. Fixation of rate of minimum wages is not liable to be interfered with under Article 226 of the Constitution, in view of judgment of the Hon'ble Supreme Court in M**inistry of Labour and rehabilitation v. Tiffin's BA and Private Limited,** 1985 Lab. I.C. 1634 = 1985(3) SCC 594=AIR 1985 SC 1391. Reference has also been made to a DB judgment of the Patna High Court in **Minerva Printing Works v. State of Bihar and others,** 1997 Lab.IC 407, to submit that revision of minimum wages need not be only to the extent of increase in the CPI.

Alongwith the present petition, we have also heard CWP Nos. 11326, 11327, 11328, 11730, 11966, 12487, 12496

and 12744 of 2007.

In CWP No.9942 of 2007, it was submitted that there was no discussion on Agenda Item No.3 relating to 'piece rate'. The Advisory Board did not go into the question of quantum, availability of material or evaluation thereof. Procedure laid down under Section 5 to consider representations has not been followed and infact the fixation of pay of minimum wages was based on announcement by the Chief Minister in a public rally held on 26.2.2007 and calling for objections was merely a formality. Learned counsel for the petitioner relied upon judgements of the Hon'ble Supreme Court in **Standard Vacuum Refining Co. of India v. Its Workmen and another**, 1961(3) SCR 536=AIR 1961 SC 895, paras 11, 14-15, 22-26, **Express Newspaper (Private) limited and another v. The Union of India and others**, AIR 1958 SC 578, Paras 8, 49 to 67 and 108=AIR 1962 SC 12, 1962(1) SCR 946, paras 13-15, 17, **M/s Unichem Laboratories Limited v. The Workmen**,1972(3) SCC 552, para 76. **Bhikusa Yamasa Kshatriya and another v. Sangamner Akola Taluka Bidi Kamgar Union and others,** AIR 1963 SC 806 para 4, **Bijay Cotton mills Limtied and others v. State of Ajmer,** AIR 1955 SC 33, **Karnataka Planters' Association v. State of Karnataka,** ILR 1986 KAR 1787 (Karnataka), **HB Verma v. Union of India and others,** (1993) ILLJ 39 (Delhi) and **Utkal Chamber of Commerce and Industry Limited and others v. State of Orissa and others,** 1992(1) OLR 530.

In Civil Writ Petition No.11326 of 2007, it was submitted that the petitioner was already paying higher rate of minimum wages i.e. Rs.4348/- for unskilled and Rs.4544/- for semi-skilled and Rs.6064/- for skilled. It was submitted that classification was contrary to the law laid down by the Hon'ble Supreme Court in **Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia v. State of Bombay,** AIR 1962 SC 486, paras 17-18 and the impugned notification amounted to fixing the conditions of service of the employees. It was also submitted that since the rate fixed in the impugned notification was “all inclusive”, the DA was covered therein, in view of law laid down in ***Airfreight Ltd. v. State of Karnataka, AIR 1999 SUPREME COURT 2459***, para 20. It was also submitted that provision has been made for payment to the trainees 75% of wages for the workers which should not be less than wages for unskilled workers which amounted to interference with the right of appointment of the employer.

In CWP No.11730 of 2007, it was submitted on behalf of the petitioner that procedure followed was not proper as names of the representations/petitioners were not mentioned in the minutes of the meeting.

Reliance was also placed on judgements of the Hon'ble Supreme Court in ***Chandra Bhawan Boarding and Lodging, Bangalore v. State of Mysore***, AIR 1970 SC 2042=1969(3) SCC 84 and **Express Newspapers Pvt. Ltd. v. Union of India,** AIR 1958 SC 578.

Question for consideration is whether the impugned

notification, Annexure P-1, is liable to be quashed on the ground that revision did not correspond to increase in the CPI or that procedure for fixation of minimum wages was not fair and objections of the petitioner were not considered or on the ground that classification in the impugned notification were not proper.

Before considering the above question, it is necessary to refer to the concept of minimum wage.

In ***Bijay Cotton Mills Ltd.*** *(supra*), it was observed:-

> "4. It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of our Constitution. It is well known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the resolutions passed in that convention were embodied in the International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions. Vide - 'South India Estate Labour Relations organisation v. State of Madras', AIR 1955 Mad 45 at p. 47: 1954-1 Mad LJ 518 (A).
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> If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty

and helplessness, are willing to work on lesser wages."

In ***Standard Vacuum Refining Co.****(supra)*, it was observed:-

"8. ……. The advent of the doctrine of a welfare State is based on notions of progressive social philosophy which have rendered the old doctrine of laissez faire obsolete. In the nineteenth century the relation between employers and employees were usually governed by the economic principle of supply and demand, and the employers thought that they were entitled to hire labour on their terms and to dismiss the same at their choice subject to the specific terms of contract between them, if any. The theory of "hire and fire" as well as the theory of "supply and demand" which were allowed free scope under the doctrine of laissez faire no longer hold the field. In constructing a wagestructure in a given case industrial adjudication does take into account to some extent considerations of right and wrong, propriety and impropriety, fairness and unfairness. As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement collective bargaining enters the field, wagestructure ceases to be as purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workmen living in a civilised and progressive society also come to be

recognised. It is in that sense, and no doubt to a limited extent, that the social philosophy of the age supplies the background for the decision of industrial disputes as to wagestructure. As Mrs. Barbara Wootton has pointed out, the social and ethical implications of the arithmetic and the economics of wages cannot be ignored in the present age (*The Social Foundations of Wage Policy" by Barbara Wootton - Allen and Unwin, 1955*).

"9. It is because of this socio-economic aspect of the wagestructure that industrial adjudication postulates that no employer can engage industrial labour unless he pays it what may be regarded as the minimum basic wage. If he cannot pay such a wage he has no right to engage labour, and no justification for carrying on his industry; in other words, the employment of sweated labour which would be easily available to the employer in all undeveloped and even under-developed countries is ruled out on the ground that the principle of supply and demand has lost its validity in the matter of employment of human labour, and that it is the duty of the society and the welfare State to assure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage. This position is now universally recognised.

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11. In their work "Industrial Democracy" published in 1920 Sidney and Beatrice Webb observed that " there is a growing feeling not confined to trade unionists that the best interest in the community can only be attained by deliberately securing to each section of the workers those conditions which are necessary for the

continuous and efficient fulfilment of its particular function in the social machine" (p. 590).

12. In 1919 the Commissioner of the Bureau of Labour Statistics conducted a tentative budget enquiry in the United State of America, and analysed the objects with reference to three concepts, namely, the pauper and poverty level, the minimum of subsistence level and the minimum of health and comfort level; the last was taken for determining the standard of a living wage. This classification was approved by the Royal Commission on the Basic Wage for the Common wealth of Australia, and it proceeded through norms and budget enquiries to ascertain what the minimum of comfort level should be. The Commission quoted with approval the description of minimum health and comfort level in the following terms:

> "This represents a slightly higher level than that of subsistence, providing not only for the material needs of food, shelter and body covering, but also for certain comforts such as clothing sufficient for bodily comfort, and to maintain the wearer's instinct of self-respect and decency, some insurance against the more important misfortunes -death, disability and fire-good education for the children, some amusement, and some expenditure for self-development" (*Cited in the Report of the Committee on Fair Wages published by the Government of India, Ministry of Labour -pp. 5 and 6*).
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14. The Fair Wages Committee which made its Report in 1949 broadly accepted the view expressed by the Royal Commission on the basic wage for the

Commonwealth of Australia which we have already cited. According to the Committee, " the living wage" should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age". The Committee emphasised that "the minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities" *(*Cited in the Report of the Committee on Fair Wages published by the Government of India, Ministry of Labour-p. 8*).

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18. Before the tribunal the Union filed statements to show that the wagestructure prevailing amongst the respondents is no more than the need-based minimum wage. In support of this plea they referred to the resolution which has been unanimously passed at the 15th Session of the Indian Labour Conference held in New Delhi on July 11 and 12, 1957. This resolution makes a declaration about the wage policy which should be followed during the Second Five Year Plan. The Tripartite Committee which passed the resolution considered the relevant notes place before it, and held that they would be useful as background material for wage fixation. It then took note of the difficulties in assessing quantitatively the individual importance of various factors affecting wage fixation, such as productivity, cost of living, the relation of wages to

national income and so on, and proceeded to discuss the wage policy with specific reference to minimum wages and fair wages. With regard to the minimum wage fixation it was agreed that the minimum wage was need-based to ensure the minimum human needs of the industrial worker irrespective of any other considerations. The calculate the minimum wage the Committee accepted the following norms and recommended that they should guide all wage fixing authorities including Minimum Wage Committees, Wage,. Boards, adjudicators, etc. The five norms accepted by the Committee were stated by it in these terms:

(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.

(ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.

(iii) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total of 72 yards.

(iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.

(v) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent, of the total minimum wage.

Having set forth these norms the Committee recognised the existence of instances where difficulties may be experienced in implementing its recommendations, and so it added that wherever the minimum wage fixed went below its recommendations, it would be incumbent on the authorities concerned to justify the circumstances which prevented them from adherence to the norms prescribed by the Committee. Having thus unanimously agreed on the content of the need based minimum wage the Committee proceeded to observe that as regards fair wages it was agreed that the Wage Board should go into the details in respect of each industry on the basis of the recommendations contained in the Report of the Committee on Fair Wages. It also placed on record its opinion that the said recommendations should be made applicable to employees in the public sector (Ex. U-3).

In ***Bhikusa Yamasa Kshatriya,*** *(supra)* it was observed:-

"5. The object and policy of the Legislature appear on the face of the Act. The object of the Act is to prevent exploitation of the workers, and for that purpose it aims at fixation of minimum wages which the employers must pay. The Legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganised labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level of wages, and subsistence level, inadequate. Conditions of labour vary in different industries and from locality to locality, and the expediency of fixing minimum wages, and the rates thereof depends largely

upon diverse factors which in their very nature are variable and can properly be ascertained by the Government which is in charge of the administration of the State. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to any scheduled trade or industry, in any locality, and if it be deemed expedient to do so, the rates at which the wages should be fixed in respect of that industry in the locality. By entrusting authority to the appropriate Government to determine the minimum wages for any industry in any locality or generally, the legislature has not divested itself of its authority, nor has it conferred uncontrolled power upon the State Government. The power conferred is subordinate and accessory, for carrying out the purpose and the policy of the Act. By entrusting to the State Government power So fix minimum wages for any particular locality or localities the Legislature has not stripped itself of its essential legislative power but has entrusted what is an incidental function of making a distinction having regard to the special circumstances prevailing in different localities in the matter of fixation of rates of minimum wages. Power to fix minimum rates of wages does not by itself invest the appropriate Government with authority to make unlawful discrimination between employers in different industries. Selective application of a law according to the exigencies where it is sanctioned ordinarily results in permissible classification. Article 14 forbids class legislation but does not prohibit reasonable classification for the purpose of legislation. If the basis of classification is indicated expressly or by implication,

> by delegating the function of working out the details of a scheme according to the objects of the statute and principles inherent therein, to a body which has the means to do so at its command, the legislation will not be exposed to the attack of unconstitutionality. In other words, even if the statute itself does not make a classification for the purpose of applying its provisions, and leaves it to a responsible body to select and classify persons, objects, transactions, localities or things for special treatment, and sets out the policy or principles for its guidance in the exercise of its authority in the matter of selection, the statute will not be struck down as infringing Art. 14 of the Constitution. This principle is well recognised: see Kathi Raning Rawat v. State of Saurashtra, 1952 SCR 435: (AIR 1952 SC 123)."

In ***Chandra Bhawan Boarding and Lodging*** *(supra)* it was observed:-

> "3. The Act came to be enacted to give effect to the resolutions passed by the minimum wages fixing Machinery Convention held at Geneva in 1928. The relevant resolutions of the Convention are embodied in Arts. 223 to 228 of the International Labour Code. The object of these resolutions as stated in Art. 224 was to fix minimum wages in industries "in which no arrangements exist for the effective regulation of wages by collective agreements or otherwise and wages are exceptionally low". The Central legislature enacted the Act in 1948 and it came into force on March 15, 1948. The long title to the Act says that it is an Act for fixing minimum rates of wages for certain employments. The preamble to the Act says that "it is expedient to provide

for fixing minimum rates of wages in certain employments". Section 2 defines certain terms. Section 3 empowers the appropriate Government which expression is defined in Sec. 2 (b) to fix the minimum rates of wages payable to the employees employed in an employment specified in Part I or in part II of the Schedule and in any employment added to either part in exercise of the powers granted under Section 27 of the Act. Clause (b) of Sec. 3 (2) empowers the appropriate Government to review at such intervals as it may think fit, such intervals not exceeding five years, minimum rates of wages so fixed and revise the minimum rates, if necessary. Sub-section (3) of that section stipulates that in fixing or revising minimum rates of wages under that section different minimum rates of wages may be fixed in different scheduled employments for different classes of work in the same scheduled employment for adults, adolescents, children and apprentices and for different localities. Section 4 prescribes the different methods in which the minimum rates of wages can be fixed. Section 5 is important for our present purpose. It reads thus:

> "(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either -
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> (a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or
>
> (b) by notification in the Official Gazette, publish its proposals for the information of persons likely

to be affected thereby and specify a date, not less than two months from the date of the notification on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section (1) or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue :

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-sec. (1), the appropriate Government shall consult the Advisory Board also".

4. Section 7 says that for the purpose of co-ordinating the work of committees and sub-committees appointed under Sec. 5 and for advising it generally in the matter of fixing and revising the rates of wages, the appropriate Government should appoint an Advisory Board. Section 8 provides for the appointment of a Central Advisory Board. Section 9 prescribes the composition of the various committees and sub-committees under Section 5 and the Advisory Boards under Sections 7 and 8. Section 11 authorises the appropriate Government to fix

wages in kind under certain circumstances and to fix its value in terms of money. Section 12 stipulates that the employer shall pay to every employee engaged in a scheduled employment the minimum rates of wages fixed by the notification. The other provisions of the Act except Sec. 27 are not relevant for our present purpose. Section 27 empowers the appropriate Government to add to either part of the Schedule any employment in respect of which it is of opinion that the minimum rates of wages should be fixed under the Act.

In ***M/s Hindustan Hosiery Industries v. F.H. Lala and another*** AIR 1974 SC 526, it was observed:

"16. From an examination of the decisions of this Court, it is clear that the floor level is the bare minimum wage or subsistence wage. In fixing this wage, Industrial Tribunals will have to consider the position from the point of view of the worker; the capacity of the employer to pay such a wage being irrelevant. The fair wage also must take note of the economic reality of the situation and the minimum needs of the worker having a fair-sized family with an eye to the preservation of his efficiency as a worker.

17. Wage fixation is an important subject in any social welfare programme. Wage cannot be fixed in a vacuum and has necessarily to take note of so many factors from real life a worker lives, or is reasonably expected to live or to look forward to with hope and fervency in the entire social context. It is obvious that some principles have to be evolved from the conditions and circumstances of actual life."

In ***Reptakos*** (supra) it was observed:-

“10. The Tripartite Committee of the Indian Labour Conference held in New Delhi in 1957 declared the wage policy which was to be followed during the Second Five Year Plan. The Committee accepted the following five norms for the fixation of 'minimum wage':

> "(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.
>
> (ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.
>
> (iii) Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total of 72 yards.
>
> (iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.
>
> (v) Fuel, lighting and other' miseellaneous' items of expenditure should constitute 20% of the total minimum wage."

11. This Court in Standard Vacuum Refining Company's case (AIR 1961 SC 895) (supra) has referred to the above norms with approval.

12. The concept of 'minimum wage is no longer the

same as it was in 1936. Even 1957 is way-behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guicie for fixing the minimum . wage in the industry:-

> "(vi) children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage."

13. The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.

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25. In any case we are of the opinion that purchasing power of today's wage cannot be judged by making calculations which are solely based on 30/40 years old wage structure. The only reasonable way to determine the category of wage structure is to evaluate each component of the category concerned in the light of the prevailing prices. There has been sky-rocking rise in the prices and the inflation chart is going up so fast that the only way to do justice to the labour is to determine

the money value of various components of the minimum wage in the context of today.

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27. The above dicta was reiterated by this Court in Ahmedabad Mills Owners' Association v. Textiles Labour Association (1966) 1 SCR 382: (AIR 1966 SC 497) wherein this Court through Gajendragadkar, C.J., laid down as under:-

> "The other aspect of the matter which cannot be ignored is that if a fair wage structure is constructed by industrial adjudication and in course of time, experience shows that the employer cannot bear the burden of such wage structure, industrial adjudication can, and in a proper case should revise the wage structure, though such revision may result in the reduction of the wages paid to the employees..... if it appears that the employer cannot really bear the burden of the increasing wages bill industrial adjudication, on principle, cannot refuse to examine the employer's case and should not hesitate to give him relief if it is satisfied that if such relief is not given, the employer may have to close down his business..... This principle, however, does not apply to cases where the wages paid to the employees are no better than the basic minimum wage. If, what the employer pays to his employees is just the basic subsistence wage, then it would not be open to the employer to contend that even such a wage is beyond his paying capacity."

In ***Airfreight*** (*supra),* it was observed:-

"21. As stated above minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education, medical requirements and amenities of himself and his family. While fixing the minimum wages, the capacity of the employer to pay is treated as irrelevant and the Act contemplates that rates of minimum wages should be fixed in schedule industries with a dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker. So it is required to take into consideration cost of bare subsistence of life and preservation of efficiency of the worker and for some measure of education, medical requirements and amenities. This cost is likely to vary depending upon the cost prevailing in the market of various items. If there are inflationary conditions prevailing in the country, then minimum wages fixed at a particular point of time would not serve the purpose. Therefore, Section 4 contemplates that minimum wages fixed at a particular point of time should be revised from time to time. Section 4 postulates that minimum wages fixed or revised by the appropriate Government under Section 3 may consist of basic rates of wages and special allowance at a rate to be adjusted at such intervals in such manner as the appropriate Government may direct to accord as nearly as practicable with a variation in the cost of living index number applicable to such workers; alternatively, it permits the fixation of basic rate of wages with or without cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates where so

authorised; or in the alternative it permits an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any. The purpose of Section 4 is to see that minimum wages can be linked with increase in cost of living so that increase in cost of living can be neutralised or all inclusive rates of minimum wages can be fixed. But, from the aforesaid Sections 3 and 4, it is apparent that what is fixed is total remuneration which should be paid to the employees covered by the schedule and not for payment of costs of different components which are taken into consideration for fixation of minimum rates of wages. It is thus clear that the concept of minimum wages does take in the factor of prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the prices of essential commodities by linking up scales of minimum wages with the cost of living index is provided for in Section 4 but V.D.A. is part and parcel of wages. Once rates of minimum wages are prescribed under the Act, whether as all inclusive under Section 4(1)(iii) or by combing basic plus dearness allowance under Section 4(1)(i) are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each necessities taken into consideration for fixing the same. Hence, in cases where employer is paying total sum which is higher than minimum rates of wages fixed under the Act including the cost of living index (VDA), he is not required to pay VDA separately. However, that higher wages should be calculated as defined in Section 2(h) of the Act. Section 2(h)

specifically provides that value of the following items is not required to be computed for finding out whether employer pays minimum wages as prescribed under the Act:-

(i) the value of any house, accommodation, supply of light, water, medical care, or any other amenity or any service excluded by general or special order of the appropriate Government

(ii) any pension fund or provident fund or under any scheme of social insurance

(iii) any travelling allowance or the value of any travelling concession

(iv) any sum paid to any person employed to defray special expenses curtailed on him by the nature of his employment or

(v) any gratuities payable on discharge.

22. But while deciding the question of payment of minimum wages, the competent authority is not required to bifurcate each component of the costs of each item taken into consideration for fixing minimum wages, as lump sum amount is determined for providing adequate remuneration of the workman so that he can sustain and maintain himself and his family and also preserve his efficiency as a worker. Dearness Allowance is part and parcel or cost of necessities. In cases where the minimum rate of wages is linked up with V.D.A., it would not mean that it is a separate component which is required to be paid separately where the employer pays a total pay package which is more than the prescribed minimum rate of wages."

In ***Ministry of Labour Rehabilitation*** (supra), it was

observed:-

> "3. ……We also wish to emphasise that notifications fixing minimum wages are not to be lightly interfered with under Art. 226 of the Constitution on the ground of some irregularities in the constitution of the committee or in the procedure adopted by the committee. It must be remembered that the committee acts only as a recommendatory body and the final notification fixing minimum wages has to be made by the Government. A notification fixing minimum wages, in a country where wages are already minimal should not be interfered with under Art. 226 of the Constitution except on the most substantial of grounds. The legislation is a social welfare legislation undertaken to further the Directive Principles of State Policy and action taken pursuant to it cannot be struck down on mere technicalities."

In ***Minerva Printing Works*** (*supra)*, the Patna High Court observed:-

> "15. Mr. Lal next contended that the basic wages fixed under the impugned notification were illegal, excessive and without any rationale. The submission was based on a comparison of the wages fixed under the impugned notification dated 26.11.1981 and the wages said to have been fixed in the year 1960 when the consumer price index was 100. It was submitted that the wage of Rs.45/- per month fixed in 1960 when the consumer price index was at 100 could not be increased to more than Rs.191.25 per month in 1981 when the consumer price index stood at 425 as mentioned in the impugned notification itself. The submission is based on simple arithmatical calculation that in case wage 'x' was fixed when the consumer

> price index was at 100 points, the revised wage at consumer price index 425 could be no more than x/100x425. It is further stated that in the notification dated 9.3.1991, containing the proposals for revision of wages, the proposed revised wages were within the limit but in the final notification the wages were within the limit but in the final notification the wages in respect of some categories of employees were further increased and were fixed above the aforesaid limit. In my opinion, the submission is wholly devoid of any substance. The plain language of Sections 3(I) (b) and 5 of the Act does not impose any restriction upon the appropriate Government that the revision of wages must be only to the extent of increase in the consumer price index. Neither is there any restriction that the minimum wages finally fixed under Section 3(1)(b) read with Section 5 of the Act must not exceed the proposals made in terms of Section 3(1) b). Otherwise the provisions of issuing a proposal for revision inviting objections and suggestions and consulting the Advisory Board would become meaningless. I, therefore, see no substance in Mr. Lal's contention that the basic wages fixed under the impugned notification were illegal, unreasonable and excessive and without any rationale."

From the above resume of case law, it is clear that the object of minimum wages is to secure minimum wages based on progressive social structure of society of a welfare State, to protect labour which could be subjected to exploitation in unorganised sector, to secure minimum needs of the workers and also to maintain efficiency. In such a concept, capacity of the employer was irrelevant. The concept of minimum wage has been upheld

after being tested on the anvil of Article 14 and 19(1)(g) of the Constitution.

Contentions raised on behalf of the petitioner, with reference to judgments relied upon including in ***Express Newspaper,*** and ***Unichem Laboratories,*** to submit that capacity of the employer was relevant, cannot be accepted.

The component of minimum wage, according to settled norms, includes three consumption units, minimum food requirement being calculated on the basis of intake of calories recommended by Dr. A.Y. Akroyd, clothing requirement, housing requirement, fuel requirement, children education, medical requirement, minimum recreation and provision of old age, marriage etc. In the representation of the employer, there is nothing to show that the proposed minimum wage was more than the component of minimum wage requirement to be taken into account. Concern of the employer for its profit, which is the only basis put forward in the objections, was irrelevant. Contention that minimum wage was more than increase in the CPI was also not conclusive of the matter. It cannot by any standard be held that the amount of Rs.3510/- was in excess components of minimum wages required to be kept in mind. There is nothing to show that the said amount was in excess of minimum amount paid to any Government employee or fixed in any relevant wage determination award. Thus, even if it is accepted that minutes of the meeting did not show that objections of the petitioner were considered, no prejudice can be held to have been caused to the petitioner. The

judgments on the issue of violation of procedure in **Karnataka Planters' Association** (*supra),* **HB Verma** (*supra)* and **Utkal Chamber of Commerce and Industry Limited** (*supra)* do not thus advance the case of the petitioner on the facts of the present case.

As already noticed above in the judgment of the Hon'ble Supreme Court in ***Ministry of Labour Rehalibitation*** *(supra)*, interference with the notification fixing minimum wages, when wages fixed are minimal, is not called for under Article 226 of the Constitution on the ground that there was some procedural irregularity.

We may also notice that in C.W.P. No.13356 OF 2007 ( ***Sanghrashshil Sharmik Adhikari Morcha and another v. Union of India and another***, filed on behalf of the labour, an averment has been made that minimum wage had been fixed ten rupees above Rs.3500/-, to deprive the workers of the right to receive bonus, which is payable only if the wages are less than Rs.3500/- under Section 2(13) of the Payment of Bonus Act. The said issue is a subject matter of consideration and above writ petition, which was also put up for hearing along with the present batch of petitions, has been separated.

Contention raised in C.W.P. No.11323 of 2007 about classification is clearly misconceived. The judgments relied upon in **Bidi, Bidi Leaves** (*supra)* and **Airfreight** (*supra)* are distinguishable on facts. Requirement of payment of minimum wages to Trainees is clearly within the scope of jurisdiction

conferred under Section 3 of the Act.

We do not find any merit whatsoever in the writ petition and the same is dismissed.

**(Adarsh Kumar Goel)**
**Judge**

**Sept 06, 2007** **(Ajai Lamba)**
gs/ashwani **Judge**